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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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In the Matter of

Review of Commission Consideration of  
Applications Under the Cable Landing  
License Act

IB Docket No. 00-106

**Comments of Cable and Wireless USA, Inc.**

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## EXECUTIVE SUMMARY

"In recent years, there has been explosive growth in the number and capacity of submarine cables triggered in large part by increased Internet and data traffic."<sup>1</sup> In its MCI WorldCom Order the Federal Communications Commission ("Commission" or "FCC") found that significant increases in capacity and low barriers to entry mitigated any concerns about excessive concentration.<sup>2</sup> In fact, from 1998 to 2001 there will be a 5,649 percent increase in transatlantic cable capacity and a 1,225 percent increase in transpacific capacity while per circuit costs on these routes will decrease 96.8 percent and 81.3 percent, respectively.

Against this backdrop, the Commission is properly seeking to streamline its undersea cable authorization process. "[A]pplicants for cable landing licenses are, by definition, expanding overall capacity," and "[r]egardless of the circumstances, more capacity expands consumer choice and drives down prices."<sup>3</sup> In other words, whether applicants are proposing to add capacity on existing routes or to build new cables on unserved or thin routes, the deployment of these new facilities inherently promotes competition. Thus, unnecessary licensing delays necessarily delay benefits to the public.

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<sup>1</sup> See *Review of Commission Consideration of Applications Under the Cable Landing License Act*, IB Docket No. 00-106, FCC 00-210, ¶ 1 (Rel. June 22, 2000) (Notice of Proposed Rulemaking) ("*Notice*").

<sup>2</sup> See *Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc.*, CC Docket No. 97-211, ¶ 78 (Memorandum Opinion and Order) (Rel. Sept. 14, 1998) ("*MCI WorldCom Order*").

<sup>3</sup> *Notice*, (Furchtgott-Roth, H., dissenting Statement of Commissioner at 2).

Such delays only add to existing cable construction risks—such as the difficulty of predicting future capacity demands, the huge upfront expenditures required, and the potential that the cable may never turn a profit—faced by those competing in the undersea cable industry. To the extent that the Commission can reduce licensing delays, it will reduce the regulatory uncertainty faced by participants in the undersea cable industry and, as a result, enhance their competitiveness by enabling them to enter the market more rapidly.

Paradoxically, the Notice does not propose to reduce application filing requirements. Instead, it contemplates a brand new step in the process whereby applicants would submit factual “demonstrations” to qualify for streamlining. Specifically, an applicant could show: (1) the route is or will become competitive; (2) the proposed cable system will be controlled predominantly by new entrants; or (3) there are sufficient pro-competitive “arrangements” covering such matters as landing stations, backhaul, upgrades, and use and transfer rights.<sup>4</sup> The Notice then goes on to catalogue a whole series of definitional questions, potential controversies and policy debates over what precisely would satisfy each of the three showings for streamlining.

While well intended, the practical effects of the proposed streamlining options will be to add new filing requirements and new sources of controversy—all in the name of simplifying and expediting cable authorizations. There is no assurance that the streamlining proposal will accelerate the Commission's actions—let alone the actions of the Administration. At the same time, the necessity of submitting a new factual

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<sup>4</sup> See *Notice*, ¶ 20.

demonstration to pre-qualify for streamlining injects an unnecessary step into the process as well as new definitional uncertainties. Accordingly, the proposals do not achieve their stated objectives.

An efficient and effective streamlining of the undersea cable authorization process can best be accomplished by employing an approach similar to that recently adopted for international Section 214 applications. In effect, the Commission should create a presumption in favor of granting cable applications; not routinely seek comment on competitive issues; and issue automatic grants after an appropriate notice period. In adopting such streamlining, the Commission should encourage the Administration to move to a similar fast track process that would provide for final approval of applications within the same notice period. If such approval is not timely obtained, the FCC should issue a public notice indicating that the license will be granted immediately upon Administration approval.

With respect to other issues raised in the Notice, Cable and Wireless supports: (1) the exclusion of cable owners from cable landing license applications; (2) an opt out option for acceptance of routine license conditions to avoid unnecessary paper work; (3) a reduction in regulatory fees; and (4) a confirmation of applicants' historic flexibility to operate a cable on either a common carrier or a non-common carrier basis.

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**Comments of Cable and Wireless USA, Inc.**

Cable and Wireless USA, Inc. ("C&W"), by its attorneys, herewith submits its comments in response to the above captioned Notice of Proposed Rulemaking ("Notice") concerning the streamlining of cable landing license procedures.<sup>1</sup> As an active participant in both traditional cable consortia and recent entrepreneurial undersea cable ventures, C&W strongly endorses the Commission's goal of reducing license processing burdens and times. The Notice correctly recognizes that competition has increased dramatically and that regulatory delays in approving new undersea cables only serve to delay the benefits of new competition, new capacity and new capabilities to the public.

As detailed below, C&W believes that the Notice's objectives can be best achieved by the Commission's adoption of an automatic grant approach similar to that

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<sup>1</sup> See *Review of Commission Consideration of Applications Under the Cable Landing License Act*, IB Docket No. 00-106, FCC 00-210 (Notice of Proposed Rulemaking) (rel. June 22, 2000) ("*Notice*").

employed for Section 214 applications. This process creates a presumption in favor of grants; discourages frivolous petitions to deny or objections; and ensures timely actions. In addition, the Commission also should work with the Administration to ensure that its approval process employs a similarly streamlined and equally expedited processing track.

In contrast, C&W is not persuaded that the Notice's proposals for threshold "demonstrations" to qualify for streamlining would serve the public interest. First, the proposals actually require applicants to submit significantly more information than currently required in order to "qualify" for streamlined processing. Second, the nature of the showings to qualify for streamlined processing are likely to give rise to factual disputes and interpretative questions that could slow down, rather than accelerate, processing. Third, the proposals do nothing to ensure that Commission actions will occur on a faster track, or that approvals also required from the Administration will be more rapidly obtained. In essence, the proposals are one step backwards and no steps forward from a processing perspective.

Finally, C&W agrees with several other streamlining proposals in the Notice. Specifically, the Commission should: (1) exclude cable owners from the application process; (2) reduce the paper work associated with routine license conditions through an opt out system; (3) lower regulatory fees; and (4) maintain applicants' historic flexibility to operate a cable on either a common carrier or a non-common carrier basis. Each of these points is addressed below.

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**I. AS AN ACTIVE PARTICIPANT IN BOTH CONSORTIA AND ENTREPRENEURIAL CABLES, C&W SUPPORTS PRO-COMPETITIVE STREAMLINING OF THE U.S. CABLE LANDING LICENSE PROCESS**

With these comments, C&W supports adoption of a pro-competitive and streamlined process for FCC review of U.S. cable landing license applications. C&W is a major global telecommunications carrier, offering a complete portfolio of domestic and international voice, data, Internet and messaging services to businesses and individual consumers. Today, C&W's global network serves approximately 50 countries. As described below, C&W is an active participant in the building, use and sale of undersea cable capacity. This experience in the undersea cable industry enables C&W to respond instructively to the questions posed by the Notice covering pro-competitive streamlining proposals.

C&W is making major investments to develop an all-digital, fiber optic network to serve the fast growing market of IP (Internet Protocol) and data services for business customers in the United States, Europe and the Asia-Pacific region. As a traditional cable consortia participant, the company recently has invested in new, high capacity undersea cables across both the Atlantic and the Pacific oceans (e.g., TAT-14, Japan-US, China-US).<sup>2</sup> C&W has also participated in entrepreneurial cable ventures to further

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<sup>2</sup> *AT&T Corp. et al. Joint Application for a License to Land and Operate in the United States a Submarine Cable System Extending Between the United States, Denmark, Germany, the Netherlands, France and the United Kingdom*, 1999 FCC LEXIS 4942 (October 1, 1999) ("TAT-14 Cable Landing License"); *AT&T Corp. et al. Joint Application for a License to Land and Operate a Submarine Cable Network Between the United States and Japan*, 14 FCC Rcd 13066 (1999) ("Japan-U.S. Cable Landing License"); *AT&T Corp. et al. Joint Application for a License to Land and Operate in the United States a Digital Submarine Cable System Extending Between the United States, China, Taiwan, Japan, South Korea and Guam*, 13 FCC Rcd 16232 (1998) ("China-U.S. Cable Landing License").

expand its capacity and enhance its global network. For example, C&W is a 50 percent owner of Gemini, which serves the transatlantic route, and has purchased dark fiber from Global Crossing's Pan European Crossing as part of its ultra high capacity, self-healing fiber network linking 18 European cities.<sup>3</sup> C&W's commercial experience is proof positive of competitive access to undersea cable capacity.

## **II. TODAY'S UNDERSEA CABLE INDUSTRY IS ALREADY HIGHLY COMPETITIVE AND EACH NEW CABLE BRINGS ADDITIONAL COMPETITIVE BENEFITS**

### **A. The FCC Acknowledges The Competitiveness Of The Undersea Cable Industry**

The FCC has acknowledged the competitive status of the undersea cable industry. Approving the MCI WorldCom merger, the Commission found that there had been and will continue to be "significant increases in international transport capacity" and that "this additional capacity will be provided by a growing number of suppliers."<sup>4</sup> Further, the Notice itself recognizes that, since the issuance of the MCI WorldCom Order, competition in the undersea cable industry has intensified—"[i]n recent years, there has been an explosive growth in the number and capacity of submarine cables triggered in large part by increased Internet and data traffic."<sup>5</sup> Even on those "thin

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<sup>3</sup> See "Cable & Wireless announces EUROPEAN NETWORK EXPANSION plan", at subtitle "New Pan-European fibre optic IP network" (Nov. 16, 1998) (available on the Internet at [www.cwusa.com/press](http://www.cwusa.com/press)).

<sup>4</sup> See *MCI WorldCom Order*, ¶ 78.

<sup>5</sup> See *Notice*, ¶ 1.

routes,” which by definition are not yet competitive,<sup>6</sup> the Notice acknowledges that the inclusion of a cable system loop is inherently *procompetitive* because it expands, or in some instances creates, available cable capacity to a previously underserved country.<sup>7</sup>

**B. Large Numbers Of New High Capacity Cables Are Being Planned And Deployed**

The significant growth in international transport capacity noted in the MCI WorldCom Order continues today. These increases in capacity are attributable, in part, to recent technological advances that have permitted both the expansion of capacity on existing cables,<sup>8</sup> and the construction of larger, higher capacity cables.<sup>9</sup>

According to the 1998 Circuit Status Report, the number of 64 kbps circuits deployed in the Atlantic region will increase from 795,690 in 1998 to an estimated 44,946,090 by year end 2001—a 5,649 percent increase.<sup>10</sup> While upgrades of

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<sup>6</sup> The *MCI WorldCom Order* did not address competition on “thin routes.” See *MCI WorldCom Order*, ¶ 85.

<sup>7</sup> See *Notice*, ¶ 31 (proposing to exempt from the competitive route requirements a loop on a proposed cable system that serves a “thin route”).

<sup>8</sup> See *MCI WorldCom Order*, ¶ 101.

<sup>9</sup> The Commission has noted that “newer systems are being installed with about six times the capacity. . . compared to TAT-12 and TAT-13.” See *Trends in the U.S. International Telecommunications Industry*, at 26 (Aug. 1998). TAT-12 and TAT-13 were deployed in 1996.

<sup>10</sup> 1998 *Section 43.82 Circuit Status Data*, Table 7 (Dec. 1999) (“1998 Circuit Status Report”). The data in the 1998 Circuit Status Report have been adjusted to reflect the fact that Project Oxygen has ceased development efforts for the OXYGEN cable. Joanne Taafee, *Oxygen Collapse Prompts New Pacific Network Plan; Company Business and Marketing*, *Communications Week International*, at 1 (July 17, 2000) (available on LEXIS-NEXIS).

submarine cables already deployed will contribute to the predicted increase, the deployment of new cables, such as the TAT-14, FLAG Atlantic-1, Level 3 and Hibernia cables, will effect a large part of the anticipated growth. And, capacity is still increasing; the proposed TyCom Atlantic cable, was not included in the estimates in the 1998 Circuit Status Report.<sup>11</sup>

The number of 64 kbps circuits deployed in the Pacific region also will jump from 311,850 in 1998 to an estimated 3,819,690 in 2001—a 1,225 percent increase.<sup>12</sup> The deployment of new cables, such as the PC-1, Japan-US, Southern Cross, and Guam-Philippines cables, over the course of the next year and a half will contribute to the predicted increase. As with the Atlantic region, newer proposed cables (e.g. TyCom Pacific, Australia-Japan, 360pacific CN, and FLAG Pacific-1) ensure continued additional capacity.<sup>13</sup>

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<sup>11</sup> The TyCom Atlantic cable will begin operation in the U.S. in July 2001. This cable will contain 40,000,000 64 kbps circuits. See *TyCom Atlantic (US) Inc. Application for a License to Land and Operate a Private Fiber-Optic Cable System Between the United States Mainland and the United Kingdom*, The Tycom Atlantic Cable System, SCL-LIC-20000308-00007, 5 (filed March 8, 2000).

<sup>12</sup> See 1998 *Circuit Status Report*, Table 7. Here too, the data in the 1998 Circuit Status Report have been adjusted to reflect the fact that Project Oxygen has ceased development efforts for the OXYGEN cable. See, *supra*, note 10.

<sup>13</sup> The TyCom Pacific cable will begin operation in the U.S. in May 2002. See *Tycom Networks (US) Inc. and TyCom Networks (Guam) L.L.C. Application for a License to Land and Operate a Private Fiber-Optic Cable System Between the United States Mainland, Hawaii, Guam, and Japan*, The TyCom Pacific Cable System, SCL-LIC-20000717-00026, 2, 5-6 (filed July 17, 2000). This cable will contain 80,000,000 64 kbps circuits. The Australia-Japan cable is scheduled to be placed in commercial service no later than June 2001. See *Australia-Japan Cable (Guam) Limited Application for license to land and operate in the United States a private submarine fiber optic cable extending between Australia, Guam and Japan*, SCL-LIC-20000629-00025, 1-2 (filed June 29, 2000) The 360pacific CN cable will be placed in commercial  
(Continued...)

In the Caribbean/Latin American region, a dramatic increase in capacity will occur in the near term. By year end 2001, there will be an estimated 5,225,850 64 kbps circuits deployed in this region, compared to the 236,250 circuits reported in 1998—a 2,212 percent increase.<sup>14</sup> The deployment of new cables, such as the AmeriCan-1, Americas II, MAC-1, PAC-1, ARCOS-1, MAYA-1, Atlantica-1, and SAC cables, are cited as causing the increase. Even more capacity will be offered by the South American-1 cable, which was not included in the 1998 Circuit Status Report.<sup>15</sup>

**C. Per Circuit And Consumer Costs Are Declining As A Result of More Cables And Increased Cable Capacity**

As a result of the substantial rise in cable capacity, cable owners' per-circuit costs have declined for both entrepreneurial and consortia cables. The charts attached at Appendix A illustrate this reality.<sup>16</sup> They show a 96.8 and 81.3 percent reduction of

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service in the third quarter of 2002. See *360pacific (USA) inc. Application for license to land and operate in the United States a private submarine fiber optic cable extending between the United States and Japan*, SCL-LIC-20000620-00024, 2 (filed June 20, 2000). Initially, it will have a capacity of 30,000,000 64 kbps circuits. *Id.*, 4. The FLAG Pacific -1 cable will commence operation in the fourth quarter of 2001. See *FLAG Pacific Limited Application for a License to Land and Operate in the United States a Digital Submarine Cable System Between the United States and Canada and Japan and Korea*, SCL-LIC-20000606-00023, 3 (filed June 6, 2000).

<sup>14</sup> See 1998 Circuit Status Report, Table 7.

<sup>15</sup> The South America-1 cable will begin operation in the U.S. in November 2000. See *Telefonica SAM USA, Inc. and Telefonica SAM de Puerto Rico, Inc. Application for License to Land and Operate in the United States the South America-1 ("SAM-1") Cable Network, a Private Fiber-Optic Cable Network Extending between Florida, Puerto Rico, Brazil, Argentina, Chile, Peru and Guatemala*, SCL-LIC-20000204-00003, 2 (filed Feb. 4, 2000). The cable will have an initial capacity of 625,000 64 kbps circuits. *Id.*, 4.

<sup>16</sup> Chart 1 illustrates both the downward trend in average cost per circuit and the upward trend in the amount of available capacity in the Atlantic Region. Chart 2  
(Continued...)

per-circuit cable costs in the Atlantic and Pacific regions respectively, and a corresponding 5,649 and 1,225 percent expansion of cable capacity in these same regions from 1998 to 2001. As a result of increased competition and greater amounts of capacity, cable owners have lowered the per circuit prices charged to carriers. For example, C&W, an owner of capacity on a number of cables, has passed its cost savings on to its customers.

**D. Construction Of Each New Cable Brings Additional Competitive Benefits To Consumers**

As a general principle, the grant of an application to construct a new cable adds capacity and encourages production of competing facilities.<sup>17</sup> This concept holds true without regard to existing cable capacity on the route. On currently unserved routes, the grant of a cable landing license will initiate service for the first time. On routes served by only one cable, adding a second cable will massively increase capacity and

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illustrates these trends for the Pacific region. A chart for the Caribbean/Latin American region is not attached because the FCC does not have cost figures for about half of the cables in the region. These charts are intended to update and correct the charts attached to the letter from Paul W. Kenefick to Elizabeth Nightingale dated January 13, 2000. See Letter from Paul W. Kenefick, Director, International Regulatory Affairs, Cable and Wireless, to Elizabeth Nightingale, International Bureau, FCC (January 13, 2000). For example, the charts attached hereto at Appendix A have been adjusted to reflect the fact that Project Oxygen has ceased development efforts for the OXYGEN cable. See, *supra*, note 10.

<sup>17</sup> The Notice implicitly recognizes this principle by indicating that exemption of a loop on a proposed cable system that serves a “thin route” from the competitive route demonstration may be necessary. Notice, ¶ 31. The justification for this proposed exemption being that, while “thin routes” may not be highly competitive, the inclusion of a loop on a cable system that serves a previously underserved country is inherently procompetitive.

introduce competition. Even if two or more cables already serve the route, one more cable will always heighten existing competition.

Moreover, the reality that each additional cable augments capacity and competition on a route is not altered by the identity of the cable owner. The same competitive benefits accrue to a route without regard to whether the capacity is owned by a new entrant or a pre-existing participant. In the words of Commissioner Furchtgott-Roth, “[r]egardless of the circumstances, more capacity expands consumer choice and drives down prices.”<sup>18</sup> The dramatic increase in cable capacity over the past decade, and the correspondingly dramatic decrease in the per circuit prices charged by cable owners illustrate this.<sup>19</sup>

### **III. C&W URGES THE FCC TO ESTABLISH A STREAMLINED SYSTEM FOR THE AUTOMATIC GRANTING OF CABLE LANDING LICENSE APPLICATIONS**

C&W proposes that the Commission expand upon the streamlining proposals set forth in the Notice and adopt a broad streamlining initiative modeled after the streamlined Section 214 process.<sup>20</sup> Indeed, the Notice already proposes to borrow certain aspects of the streamlined Section 214 process—for example, issuing cable landing licenses by public notices, as opposed to orders; and declining to routinely seek

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<sup>18</sup> Notice, (Furchtgott-Roth, H., dissenting Statement of Commissioner at 2).

<sup>19</sup> As previously noted, the charts attached at Appendix A illustrate the dramatic increase in cable capacity since 1988, and the correspondingly dramatic drop in cable owners’ per circuit costs during this same time period.

<sup>20</sup> See Notice, ¶ 51.

comment on cable landing license applications.<sup>21</sup> However, broader streamlining measures are warranted because, as a result of the competitiveness of the undersea cable industry, the great majority of cable landing license applications do not raise public interest issues that warrant substantial Commission scrutiny. Accordingly, C&W recommends a more wholesale adoption of the Section 214 autogrant process.

In making this recommendation, C&W acknowledges the Notice's assertion that the Section 214 process cannot be adopted in its entirety because of "the unique role of the Executive Branch with respect to submarine cable landing licenses."<sup>22</sup>

Nevertheless, the Commission can adopt more significant streamlining measures consistent with its delegation of authority pursuant to the Cable Landing License Act ("CLLA") and Executive Order 10530. As detailed below, the Commission can avoid overstepping its statutory authority by working with the Executive Branch to obtain pre-approvals for licenses that the Commission determines are eligible for streamlined processing, or, in the alternative, by issuing licenses that will be deemed granted upon ultimate approval by the State Department. Either of these approaches will facilitate certainty of licensing within the established streamlining time frame.

Adoption of an expanded streamlining initiative will better achieve the Commission's goal of "grant[ing] licenses more quickly to allow parties to enter the market rapidly."<sup>23</sup> In fact, the Notice itself recognizes that the Section 214 process "has

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<sup>21</sup> *Id.*, ¶¶ 56, 60.

<sup>22</sup> *Id.*, ¶ 54.

<sup>23</sup> *Id.*, ¶ 5.

been, and continues to be, successful in expediting regulatory processing and enhancing the competitiveness of service providers in the global communications marketplace.”<sup>24</sup> The Notice then indicates that adoption of such a system for the processing of cable landing license applications could serve the same purpose with respect to the submarine cable industry.<sup>25</sup>

#### **A. The Commission Should Grant Licenses By Public Notice**

The Commission should adopt its proposal to issue public notices listing granted cable landing licenses (unless, as discussed below, an application is deemed ineligible for streamlined treatment).<sup>26</sup> Eliminating the current practice of issuing cable landing licenses by order will lessen regulatory delay, thus enabling carriers to respond more quickly to consumer capacity needs. C&W believes that granting licenses by public notice satisfies the requirement under the CLLA that the President issue “written licenses” because the term “written” generally is interpreted to include anything in written form.<sup>27</sup>

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<sup>24</sup> *Id.*, ¶ 54.

<sup>25</sup> *See id.*, ¶ 54.

<sup>26</sup> *Id.*, ¶ 56 (“... we propose to issue the license by Public Notice, rather than by issuing an order.”).

<sup>27</sup> *See Illinois RSA No. 3, Inc. v. County of Peoria*, 963 F. Supp. 732, 743 (C.D. Ill. 1997) (interpreting the term “in writing” as used in Section 332(c)(7)(B)(iii) of the Telecommunications Act to require that the decision to “deny a request to place, construct, or modify personal wireless service facilities” be in written form); *United States v. McCord*, 695 F.2d 823 (5<sup>th</sup> Cir.), *cert. denied*, 460 U.S. 1073 (1983) (holding that “a telex issued by an authorized official constitutes ‘formal approval in writing’ as required by [18 U.S.C. § 1073]”). *See also* 1 U.S.C. § 1 (defining “writing” for purposes of determining the meaning of any Act of Congress, unless the context indicates otherwise, to include “printing and typewriting and reproductions of visual symbols by  
(Continued...)

However, should the FCC determine that issuance of a public notice does not satisfy the requirements of the CLLA, the Commission could streamline the process of issuing licenses in orders by creating a template or form for cable landing license orders and requiring applicants to submit a proposed order that follows the template or form with their applications.<sup>28</sup> FCC staff could then make edits to and insert special conditions into the proposed order as needed. Because the submission of a proposed order will reduce the time it takes Commission staff to draft orders granting cable landing licenses, it will expedite the processing of cable landing license applications.

#### **B. The FCC Should Grant Licenses Within A Maximum of 60 Days**

C&W recommends that the Commission adopt its proposal to grant cable landing licenses a specified number of days after the date of the FCC public notice listing the application as accepted for filing.<sup>29</sup> As shown in the following table, the agency has

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photographing, multigraphing, mimeographing, manifolding, or otherwise”); 15 U.S.C. § 77b(a)(9) (defining the terms “write” and “written” to include “printed, lithographed, or any means of graphic communication”).

<sup>28</sup> To further expedite the licensing process, the FCC could encourage the electronic submission of cable landing license applications and proposed orders. This would reduce processing times by eliminating the need for the Commission staff to convert an applicant’s proposed order from a paper to an electronic version before beginning to work on the substance of the order. *Notice*, ¶ 57 (“We seek comment on whether it would significantly speed and facilitate the submarine cable landing licensing process if we were to encourage or mandate submarine cable landing license applicants to use the existing electronic application form for submarine cable landing licenses, in lieu of filing written applications.”).

<sup>29</sup> See *Notice*, ¶ 54 (proposing that “the Commission will grant [applications eligible for streamlined treatment] 60 days from the date the International Bureau issues a public notice accepting the application for filing. . .”).

established periods of time normally required to reach decision on other types of applications with great success.

Application Type	Time Period
Streamlined Section 214 Application	14 days
Non-Streamlined Section 214 Application	90 days
Streamlined Petition for Declaratory Ruling to Exceed the 25% Benchmark Under Section 310(b)	45 days
Non-Streamlined Petition for Declaratory Ruling to Exceed the 25% Benchmark Under Section 310(b)	60 days
Section 271 Applications	90 days
Mergers	180 days

The statutory and target time frames established for granting other streamlined applications indicate that the Notice's proposed 60 days would be an appropriate period of time for the automatic grant of cable landing licenses.<sup>30</sup> C&W believes a maximum review period of 60 days will provide carriers the licensing certainty essential to their already risk-laden commercial operations. Establishment of a 60 day window for grant of cable landing licenses will enable applicants to enter the submarine cable industry with greater speed—something the Notice itself acknowledges is crucial for firms competing in the submarine cable industry.<sup>31</sup>

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<sup>30</sup> A decision to accept for filing cable landing licenses within a specified number of days would also serve the public interest. See *Notice*, ¶ 54 (“We expect that the period between the filing of an application and the release of a public notice ordinarily would not be lengthy because the International Bureau would put an application out on public notice promptly after determining that the application is complete.”).

<sup>31</sup> *Id.*, ¶ 5 (“The Commission continually seeks ways to grant licenses more quickly to allow parties to enter the market rapidly, especially as new technological developments make speed to market crucial for firms competing in the ever changing Internet-driven communications market.”).

**C. Close Coordination With The Executive Branch Should Permit The FCC To Grant Licenses Within a Maximum of 60 Days Or Provide FCC Approval With Automatic Grant Upon Final Approval Of The Executive Branch**

C&W supports the agency's intent to "coordinate closely with the Department of State in any streamlining measures"<sup>32</sup> and endorses the objective of obtaining Executive Branch approval for licenses within any streamlined processing period ultimately adopted by the Commission.<sup>33</sup> To facilitate the concurrence of the Executive Branch, the FCC should collaborate with the Secretary of State to create a standard form of Executive Branch approval. The form should identify the proposed cable, its landing points, and the applicant(s); and provide two alternative boxes: (1) Application Approved and (2) Application Denied. Executive Branch comments, if any, could be included on the form as well. Through checking a box and signing this form, the State Department approval could be obtained swiftly and efficiently.

To accomplish the goal of obtaining Executive Branch approval within any streamlined processing period ultimately adopted by the Commission, C&W recommends that the FCC coordinate with the Department of State for pre-approval to grant all applications that qualify for streamlined processing.<sup>34</sup> Should the Department of State hesitate to pre-approve such a broad class of license grants, the Executive

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<sup>32</sup> Notice, ¶ 52.

<sup>33</sup> See Notice, ¶ 54 (proposing to "grant the [streamlined] application 60 days from the date the International Bureau issues a public notice accepting the application for filing. . .").

<sup>34</sup> See Section III. E., *infra* (discussing which applications should be eligible for streamlined processing).

Branch could pre-approve a more limited group of applications, such as those to land cables in all countries that are currently served by a U.S. cable, are members of the World Trade Organization, and are not subject to trade sanctions.

In the event that the Commission is unable to coordinate the pre-approval or simultaneous approval of a cable landing license with the Executive Branch within its streamlined processing time, C&W does not agree with the Notice's proposal to "indicate in a public notice why grant of the application within [the streamlined processing period] cannot be provided."<sup>35</sup> The agency employs such an approach in the context of granting non-streamlined Section 214 applications<sup>36</sup> and several applications have thus remained in processing limbo for extended periods of time, resulting in a lack of commercial certainty for the applicants. Instead, the agency should issue a public notice within a maximum of 60 days indicating that the application has been approved by the FCC and that the license as described in the public notice will be deemed granted upon FCC receipt of final approval by the Department of State.<sup>37</sup>

The issuance of a public notice announcing the FCC's endorsement of the application with ultimate grant of the license automatically upon receipt of Executive

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<sup>35</sup> See *Notice*, ¶ 54.

<sup>36</sup> 47 C.F.R. § 63.12(d).

<sup>37</sup> This approach is similar to the proposal in the *Notice* for conditional license grants and, but not "granting" the license prior to obtaining Executive Branch approval, may more closely conform to the FCC's delegation of authority. See *Notice*, ¶ 55 ("We also might consider adoption of a conditional grant whereby we would condition our grant of authority on ultimate approval by the Department of State.").

Branch approval complies with the Commission's delegation of authority.<sup>38</sup> Under Executive Order 10530, the President has delegated his authority to “issue, withhold, or revoke licenses” under the CLLA<sup>39</sup> to the Commission:

Provided, That no such license shall be granted or revoked by the Commission except after obtaining approval of the Secretary of State. . . .<sup>40</sup>

The plain meaning of this language indicates that Executive Branch approval is a condition precedent to the license being granted. The FCC thus has the authority to issue a license that will be deemed “granted” automatically upon satisfaction of the condition precedent—in this case, “approval of the Secretary of State.” If necessary, a further public notice could announce the date of ultimate grant (*i.e.*, the date Executive Branch approval was obtained), and include any additional license conditions imposed by the Department of State.

#### **D. The Commission Should Not Seek Routine Public Comment on Applications**

The initial public notice listing the cable landing license applications that have been accepted for filing should not solicit public comments.<sup>41</sup> Instead, if there are

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<sup>38</sup> Conditioning the grant of a license on action by the Executive Branch is essentially no different than the existing cable landing license condition making the effectiveness of a license dependent on the licensee accepting or declining the license within 30 days. As the *Notice* indicates, it is also consistent with grant of licenses “conditioned on the Commission’s final approval of a more specific description of the landing points to be filed by the applicant no later than 90 days prior to construction.” *Notice*, ¶ 55.

<sup>39</sup> 47 U.S.C. § § [34-39]; Exec. Order. No. 10530, Sec. 5(a).

<sup>40</sup> Exec. Order No. 10530, Sec. 5(a).

<sup>41</sup> See *Notice*, ¶ 58 (“We also seek comment on whether, with submarine cable  
(Continued...)”)

compelling public interest concerns warranting non-streamlined processing, the FCC should remove an application from the streamlined grant process by notifying the applicant within twenty-one days of the initial public notice. This ensures additional scrutiny of applications that warrant public comment without causing needless delay or uncertainty for applicants.

**E. All Applicants Should Presumptively Qualify For Streamlined Processing**

C&W recommends that the class of applications eligible for streamlined treatment be quite expansive. In light of the existing market competitiveness and the consumer benefits derived from each additional undersea cable, C&W suggests that all applications for cable landing licenses should initially qualify for streamlined processing within the maximum 60 day time frame. The agency should avoid, however, its proposed licensing approach, which would require applicants to make additional or complex demonstrations as a prerequisite to streamlined treatment.<sup>42</sup>

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(...Continued)

landing license applications, as is the case currently with streamlined Section 214 applications, we should decline to routinely seek comment on competitive or other issues that parties may seek to raise in the context of streamlined applications.”).

<sup>42</sup> See *Notice*, ¶¶ 19-20 (“Under our proposal, an applicant for a submarine cable landing license may demonstrate that its application conforms with any one of the three streamlining options. . . . We propose the following three streamlining options from which an applicant may choose: (1) a demonstration that the route on which the proposed cable would operate is or will become competitive; (2) a demonstration of sufficient independence of control of the proposed cable from control of existing capacity on the route; and (3) evidence of certain pro-competitive arrangements.”).

#### **IV. AN AUTOMATIC GRANT PROCESS WILL SERVE THE FCC'S PRO-COMPETITIVE GOALS FOR THE UNDERSEA CABLE INDUSTRY.**

C&W's proposed automatic grant process for cable landing license applications is the best method for implementing the agency's pro-competitive goals and serving the public interest. By reducing processing time and adding regulatory certainty, the FCC will foster the construction of new cables, thus adding competition, and stimulating consumer choice and lower prices. The Commission's initiative may also serve as an example for foreign nations undertaking their own deregulation.

##### **A. An Automatic Grant Process Will Bring Consumers The Competitive Benefits Of New Cable Construction Faster**

The automatic grant process described above will reduce application processing times, provide greater regulatory certainty, reduce barriers to market entry, and eliminate the burden on applicants to provide enormous amounts of additional information. Thus, it will enable companies to deploy cables to market faster and may deflect the relocation of cable construction to other jurisdictions. In turn, it will indirectly benefit consumers, who will see increased choice and lower prices.

Granting cable landing licenses automatically within a maximum of 60 days will cut the processing time associated with cable landing license applications by a substantial amount, up to half based on the current processing period of six months. As shown in Appendix B, in recent years, processing times for cable landing license applications have averaged six months from date of initial public notice (which generally occurs within a few weeks of filing) to grant by written order. From cable to cable, however, individual processing times varied significantly. The swiftest processing time was 3 months and the longest—nearly five times longer—was 14 months. Establishing

a single shorter time frame in which applications will be granted or denied will reduce regulatory uncertainty and the substantial burden currently placed on applicants that wish, but are unable, to respond quickly to market demands with new cable construction. The Notice itself acknowledges that new technological developments have made speed of entry “crucial” for firms competing in the undersea cable industry.<sup>43</sup>

The streamlined grant process proposed above will also provide greater regulatory certainty—a goal set forth in the Notice<sup>44</sup>—and thus ensure that cable construction is not moved to other jurisdictions. By declining to seek routinely comments on the competitive impact of a proposed cable, the FCC will align its cable landing licensing process with the market reality that every new cable adds competition to the market. As in the context of Section 214 applications, the FCC’s decision not to accept routine comments will add regulatory certainty to the cable landing license process.<sup>45</sup> The current licensing process, which allows competitors to delay action on an application merely by filing a vaguely worded opposition, interferes with entities’ ability to construct new cables and respond quickly to downstream market developments.

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<sup>43</sup> See Notice, ¶ 5.

<sup>44</sup> *Id.*, ¶ 3.

<sup>45</sup> 1998 Biennial Regulatory Review—Review of International Common Carrier Regulations, 14 FCC Rcd 4909, 4914 (1999) (“Section 214 Streamlining Order”) (identifying “the added certainty that an applicant would have as a result of knowing that its application cannot be held up by a vaguely drafted petition to deny filed by its competitors” as one of the real benefits of not routinely seeking comment on competitive or other issues that parties may seek to raise in the context of streamlined applications).

**B. An Automatic Grant Process Will Encourage Other Countries To Adopt Similar Streamlining.**

By adopting an automatic grant process, the FCC will encourage other countries to follow in its footsteps. The founding objective of Chairman Kennard's Development Initiative is to "work with developing countries. . . around the world that are moving toward regulatory reform and competitive telecom marketplaces."<sup>46</sup> One way the FCC seeks to do this is by encouraging regulators to "draw on the experiences" of the United States.<sup>47</sup> Streamlining procedural review of cable landing license applications would put the United States in a leadership position and strengthen the FCC's effectiveness as an advocate of global deregulation for competitive markets. Indeed, developing countries are likely to copy this administratively simple system and this will benefit U.S. companies as they expand globally.<sup>48</sup>

**C. The Automatic Grant Process Will Avoid Increased Filing Burdens, Regulatory Uncertainty And Potential Delays Inherent In The Notice's Three Streamlining Proposals**

The Notice proposes to streamline the processing of applications for submarine cable landing licenses when applicants demonstrate that:

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<sup>46</sup> See *Keynote Speech of William E. Kennard, Chairman, FCC* before the annual General meeting Telecommunications Regulators Association of Southern Africa (TRASA), Gaborone, Botswana (Aug. 11, 1999) <available at [www.fcc.gov/speeches/kennard/spwek927.html](http://www.fcc.gov/speeches/kennard/spwek927.html)> (visited Aug. 16, 2000).

<sup>47</sup> *Id.*

<sup>48</sup> In contrast, if a complex system of competitive demonstrations such as that proposed in the *Notice* is adopted, U.S. companies would have to bear increased regulatory costs and burdens abroad (which generally are passed on to consumers). Further, the FCC's failure to adopt a clear and understandable streamlining initiative may encourage bypass through Canada.

- (1) there are two or more independently-owned cables in addition to the proposed cable serving the proposed route (the “Competitive Route Option”),<sup>49</sup>
- (2) the proposed cable system will be controlled predominantly by new entrants (the “Competitive Capacity Expansion Option”),<sup>50</sup> or
- (3) sufficient pro-competitive arrangements exist regarding landing stations, competitive backhaul, upgrades and use of capacity (the “Pro-Competitive Arrangements Option”).<sup>51</sup>

These proposed streamlining options are inherently flawed. As illustrated by the summary of the steps an applicant must take to obtain streamlined processing attached at Appendix C, each streamlining option requires applicants to make additional, complex demonstrations in their cable landing license applications.

Aside from the fact that the proposed streamlining initiative would create additional and complex filing requirements, there is no need to require pro-competitive demonstrations from applicants for licenses to land undersea cables because, as the FCC acknowledges, the undersea cable industry is already competitive and each new cable presumptively adds even more competition. As discussed, each additional cable only augments capacity and competition on a route and in downstream markets. Further, in the MCI WorldCom Order, the Commission concluded that its concentration concerns were addressed by the fact that there had been and would be “significant

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<sup>49</sup> See Notice, ¶ 28.

<sup>50</sup> *Id.*, ¶ 33.

<sup>51</sup> *Id.*, ¶¶ 38, 39.

increases in international transport capacity.”<sup>52</sup> The Commission noted that “this additional capacity [would] be provided by a growing number of suppliers.”<sup>53</sup>

Just as importantly, the proposed streamlining options would lengthen, not shorten, application processing times. As discussed above, the eligibility criteria for streamlined treatment are fraught with factual and definitional issues. In determining whether applications qualify for streamlined processing, the FCC will inevitably become entangled in questions about an applicants’ competitive demonstration.

The end result would be to potentially increase, rather than decrease, the time it takes for the Commission to review an application. As a result, many applicants may choose non-streamlined processing in order to avoid the possibility that factual disputes regarding their competitive demonstration might delay streamlined processing more than the average 6 months that it currently takes to obtain FCC approval of non-streamlined applications.<sup>54</sup> Obviously, a streamlining initiative that is not used by applicants will not help the FCC achieve its procompetitive goals. Moreover, a streamlining initiative that serves to enhance the significant risks associated with entering the undersea cable industry—by increasing licensing delays and regulatory uncertainty—may actually undermine the FCC’s attempts to enhance competition by

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<sup>52</sup> *MCI WorldCom Order*, ¶ 78.

<sup>53</sup> *Id.*

<sup>54</sup> The table attached as Appendix B summarizes the time periods between issuance of a public notice accepting an application for filing and grant of a cable landing license for applications filed in recent years.

reducing the burdens currently placed on applicants that wish, but are unable, to respond quickly to market demands with new cable construction.

**V. IN ADDITION TO THE AUTOMATIC GRANT PROCESS, THE FCC SHOULD ALSO STREAMLINE OTHER ASPECTS OF CABLE LANDING LICENSE REGULATION**

In addition to the automatic grant process, the FCC should streamline other aspects of its cable landing license regulation. Specifically, the agency should: (1) streamline routine license conditions; (2) require only cable landing station owners to be applicants (3) reduce regulatory fees; and (4) maintain licensees' historic flexibility to operate a cable on a common carrier or non-common carrier basis.

**A. The FCC Should Streamline Routine License Conditions**

In general, the FCC's current process of imposing routine conditions<sup>55</sup> on cable landing licenses works well.<sup>56</sup> To eliminate unnecessary "paperwork", however, the FCC should replace the requirement that an applicant affirmatively accept the terms and conditions of the cable landing license with an "opt out" option whereby the terms

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<sup>55</sup> Such conditions include, but are not limited to, a requirement that the location of the cable system within U.S. territorial waters be in conformity with plans approved by the Secretary of the Army; a requirement that the licensee move the cable, at the request of the Secretary of Army, for purposes of national defense or for the maintenance or improvement of harbors for navigational purposes; a requirement that licensees notify the FCC in writing of the date on which the cable is placed in service; and a reservation by the FCC of the right to impose additional common carrier or common carrier-like regulation on the operations of the cable system if it finds such regulation to be in the public interest.

<sup>56</sup> See *Notice*, ¶ 73 ("We seek comment on whether any of the routine conditions currently imposed on cable landing licenses should be eliminated or modified.").

and conditions are deemed accepted unless the applicant expressly rejects them.<sup>57</sup>

Further, the FCC should not develop special conditions for “major suppliers” as that term is defined in the WTO Basic Telecom Agreement Reference Paper.<sup>58</sup> As discussed, the undersea cable market is competitive. Thus, additional general safeguards are not needed.

### **B. Only Owners of Cable Landing Stations Should Be Applicants**

Only owners of cable landing stations should be applicants for cable landing licenses.<sup>59</sup> C&W agrees with Sprint’s view, expressed at the FCC’s Public Forum, that cable ownership does not need to be licensed.<sup>60</sup> This view is supported by the CLLA, which expressly requires a license to “land or operate” a submarine cable but not to own cable capacity.<sup>61</sup> One benefit of this approach is that it reduces to one the number

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<sup>57</sup> *Id.*, ¶ 74 (“We also seek comment on whether we should continue to require the applicant to submit a letter affirmatively accepting the terms and conditions of the cable landing license or whether we should adopt a negative option whereby the license automatically takes effect within 30 days after grant of the application unless the applicant notifies us that it does not accept the terms and conditions of the license.”).

<sup>58</sup> *Id.*, ¶¶ 73-75 (discussing and seeking comment on Level 3’s proposal “that the Commission develop special conditions for the licenses of submarine cables whose participants include carriers that are ‘major suppliers,’ . . .”).

<sup>59</sup> See *Notice*, ¶¶ 78-83 (seeking comment on who should be required to be an applicant/licensee, and proposing to include a “landing station owner or: (1) the entity has a five percent or greater ownership interest in the proposed cable which includes voting rights (except if the ownership is exclusively at foreign points on the cable system); and (2) the entity will use the U.S. points of the cable system in any capacity (unless the capacity merely is ‘hard-patched’ through and is not dropping traffic in the U.S. or using the U.S. points of the cable system to re-originate traffic).”). *Id.*, ¶ 81 (emphasis in original).

<sup>60</sup> See *Notice*, ¶ 79.

<sup>61</sup> 47 U.S.C. § § 34-39.

of total applicants and thus eliminates the existing disadvantage in terms of number of applicants for consortium cable vis-à-vis entrepreneur cables.<sup>62</sup> This approach would also obviate the need for license modifications or amendments as applicants or licensees change due to changes in cable ownership.

### **C. The FCC Should Propose a Reduction of Regulatory Fees**

The public interest would be served by the FCC proposing to modify its regulatory fee structure so that the fees paid by licensees are no longer tied to the capacity of their cables.<sup>63</sup> Cables today can be built with immense amounts of capacity. For licensees of these high capacity cables, this means payment of exorbitant regulatory fees on an annual basis. For example, for the fiscal year 2000, licensees of the AC-1 cable could pay up to \$6,773,760 in regulatory fees.<sup>64</sup> These fees likely far exceed the Commission's oversight costs.

Should the FCC decide to retain its current fee structure, which calculates fees based on cable capacity, C&W recommends that the FCC replace the antiquated 64 kbps regulatory fee unit with the more technologically appropriate STM-1 unit. As discussed above, due to the increased capacity of cables, regulatory fees based on 64

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<sup>62</sup> We note that the *Notice's* proposal to require 5% or greater owners to be applicants would not reduce this burden on consortium cables.

<sup>63</sup> *Id.*, ¶ 93 ("... we seek comment generally on whether, if we ultimately adopt the streamlining measures proposed in this NPRM, it would be in the public interest to propose, pursuant to Section 9(b)(3), a modification of the regulatory fees.").

<sup>64</sup> The AC-1 cable has 967,680 64 kbps circuits, and the regulatory fee for international bearer circuits is \$7 per active 64 kB (or equivalent) circuit. See Public Notice, *FY2000 International and Satellite Services Regulatory Fees*, at 2 (rel. Aug. 2, 2000).

kpbs units likely far exceed FCC oversight costs and should be reduced. Simply changing the regulatory fee unit would greatly reduce these fees. To the extent, however, that modifying the fee unit is not sufficient to closely align regulatory fees with actual FCC costs, the FCC should also propose to adjust the fee per unit.

**D. The FCC Should Maintain Applicants' Historic Flexibility To Operate A Cable On A Common Carrier Or Non-Common Carrier Basis**

The FCC should not alter its current practice of allowing submarine cables to be operated on either a common carrier or non-common carrier basis.<sup>65</sup> The Commission developed its "private submarine cable policy" with the intent that it would stimulate competition in the provision of international transmission facilities.<sup>66</sup> Since its adoption of this policy in 1985, the FCC has never denied a request for non-common carrier operation. Further, since 1985, competition in the undersea cable industry has become intense. Thus, operation of non-common carrier cables stimulates competition. Because the policy has served, and continues to serve, its purpose, it should be maintained.

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<sup>65</sup> See *Notice*, ¶¶ 61-71 (discussing and seeking comment on the "tentative conclusion to maintain our private submarine cable policy and retain the distinctions between cables operated on a common carrier and a non-common carrier basis."). *Id.*, ¶ 69.

<sup>66</sup> See *Japan-U.S. Cable Landing License*, 14 FCC Rcd at 13080; *Cable & Wireless, PLC, Application for a License to Land and Operate in the United States a Private Submarine Fiber Optic Cable Extending Between the United States and the United Kingdom*, 12 FCC Rcd 8516, 8520 (1997).

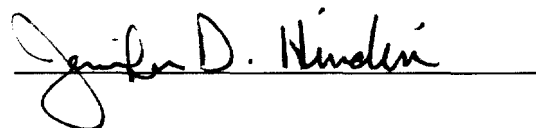
## VI. CONCLUSION

In view of the foregoing, C&W encourages the FCC to adopt a streamlined process for grant of cable landing license applications based on the approach for Section 214 authorizations. In addition, the Commission should (1) require only landing station owners to be applicants; (2) replace the requirement that applicants affirmatively accept routine license conditions with an opt out system; (3) lower regulatory fees; and, (4) continue carrier choice to operate on either a common carrier or non-common carrier basis. Actions consistent with these principles would promote the public interest.

Respectfully submitted,

CABLE AND WIRELESS

By:

A handwritten signature in dark ink, appearing to read "Jennifer D. Hindin", is written over a horizontal line.

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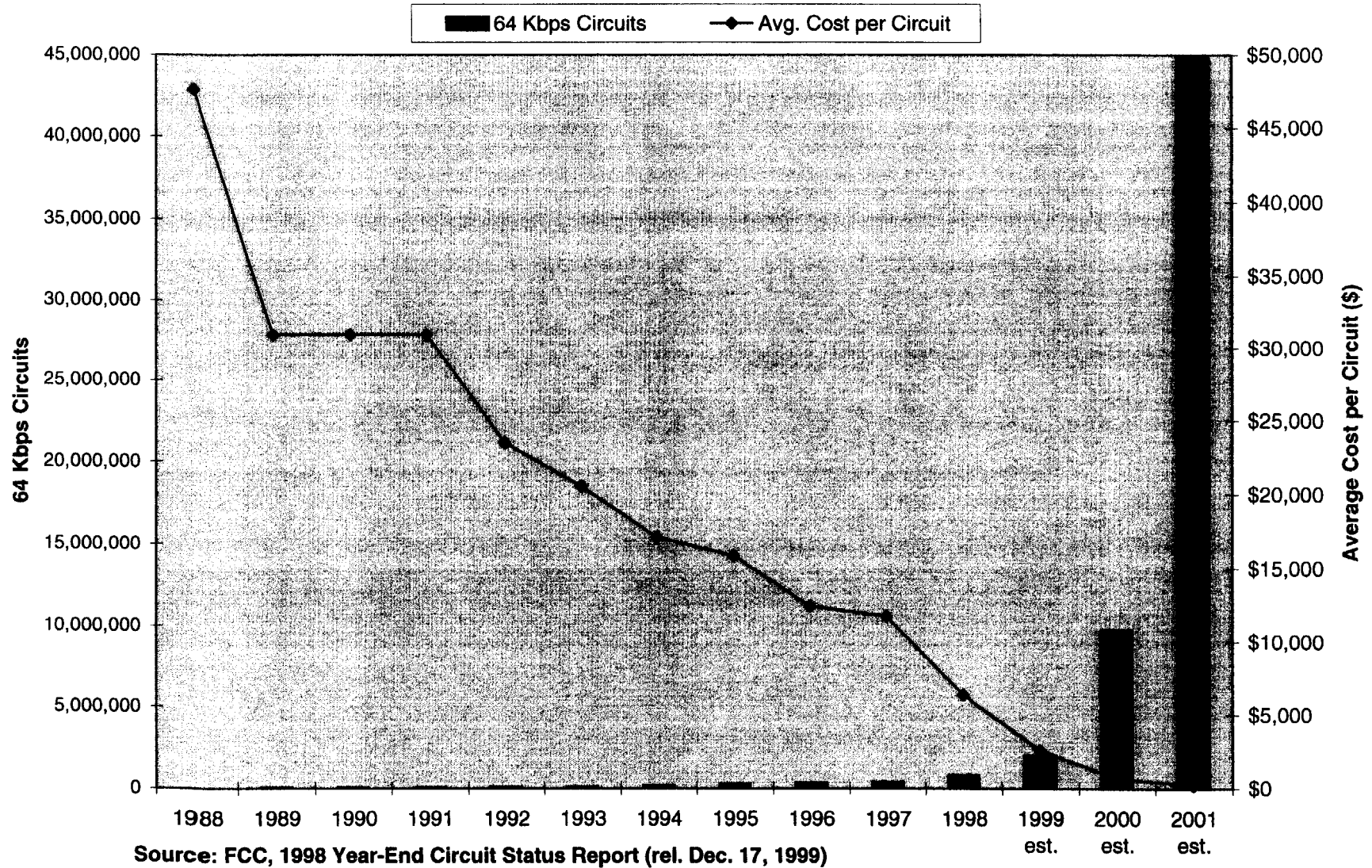
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August 21, 2000

## Appendix A - Chart 1

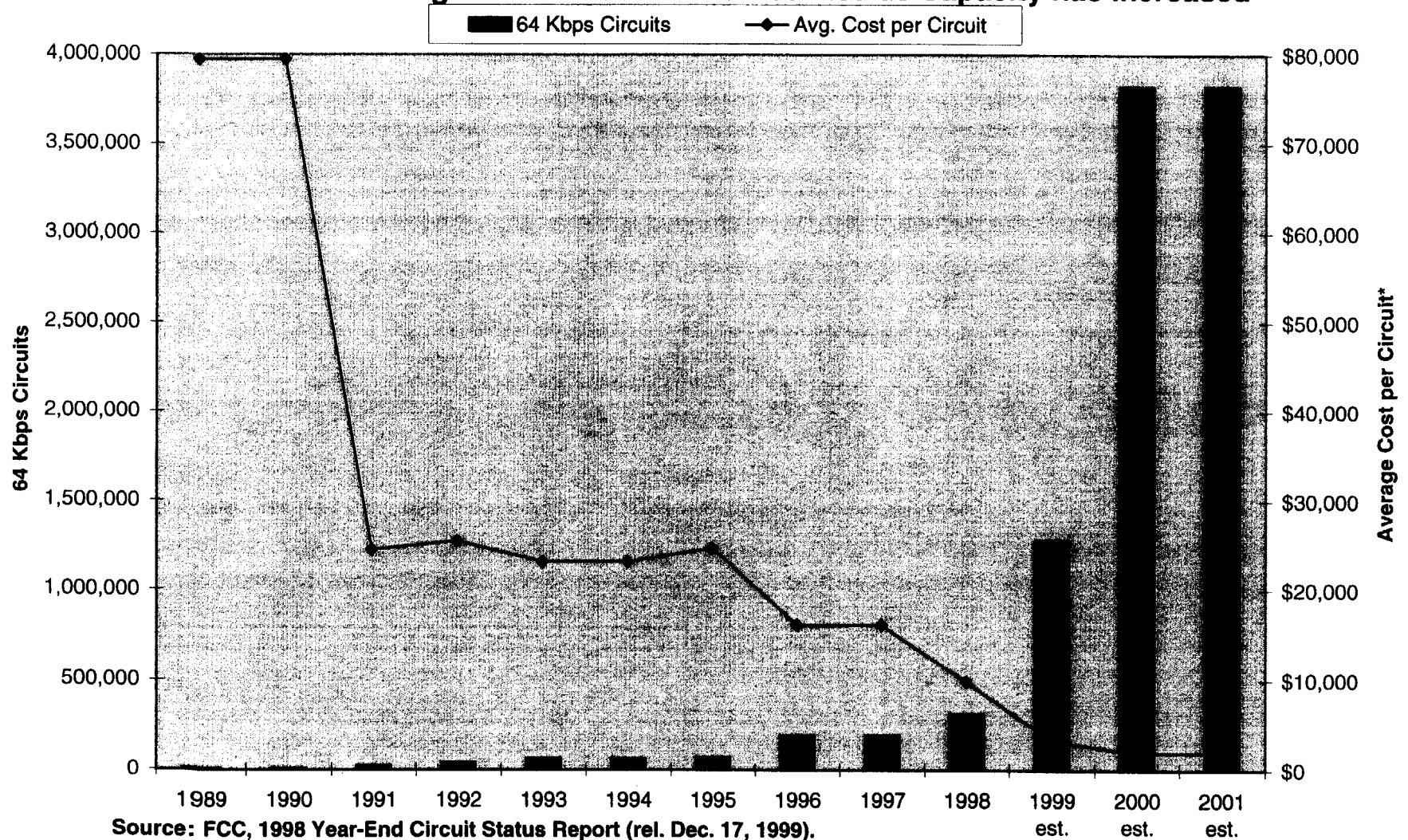
**Trans-Atlantic Average Circuit Costs Have Declined as Capacity has Increased**



\* Data does not include the OXYGEN cable as Project Oxygen recently ceased development efforts.

## Appendix A - Chart 2

**Trans-Pacific Average Circuit Costs Have Declined as Capacity has Increased**



\* Data does not include cost data for NPC and Guam-Philippines as FCC data is unavailable for these two cables. Data also does not include the OXYGEN cable as Project Oxygen recently ceased development efforts.

**APPENDIX B**  
**SUBMARINE CABLE LANDING LICENSE PROCESSING TIME**

<b>Cable</b>	<b>Application Filed</b>	<b>Public Notice</b>	<b>Order</b>	<b>Process Length*</b>
TyCom Pacific	7/17/2000	7/21/2000		Pending
Australia-Japan Cable	6/29/2000	7/12/2000		Pending
360pacific CN	6/20/2000	6/30/2000		Pending
Flag Pacific-1	6/6/2000	6/16/2000		Pending
TyCom Atlantic	3/8/2000	3/17/2000	8/8/2000	5 months
South America-1	2/4/2000	2/18/2000	8/9/2000	6 months
South American Crossing	8/23/1999	9/17/1999	2/16/2000	5 months
Hibernia	8/4/1999	8/25/1999	1/14/2000	5 months
Atlantica-I	6/2/1999	6/18/1999	12/10/1999	6 months
MAYA-I	3/25/1999	3/31/1999	11/18/1999	8 months
TAT-14	3/3/1999	3/26/1999	9/30/1999	6 months
Flag Atlantic-1	3/1/1999	3/26/1999	9/30/1999	6 months
COLUMBUS-III	5/27/1998	6/17/1998	8/20/1999	14 months
Japan-U.S.	11/17/1998	12/4/1998	7/9/1999	7 months
ARCOS-1	12/22/1998	1/6/1999	7/1/1999	6 months
Mid-Atlantic Crossing	10/30/1998	11/13/1998	3/15/1999	4 months
Pan American Crossing (PAC)	11/03/1998	11/13/1998	3/15/1999	4 months
Oxygen	10/14/1998	10/23/1998	3/10/1999	5 months
Guam-Philippines	9/2/1998	9/11/1998	12/15/1998	3 months
Pacific Crossing	8/7/1998	8/19/1998	11/23/1998	3 months
Americas-II	4/30/1998	5/13/1998	11/10/1998	6 months
China-U.S.	3/9/1998	3/18/1998	8/21/1998	5 months
AmeriCan-I	1/23/1998	2/11/1998	8/21/1998	6 months
Southern Cross	10/14/1997	10/24/1997	2/11/1998	4 months
PanAmerican	4/21/1997	4/25/1997	1/15/1998	9 months

\* Process length has been rounded to the nearest whole month.

## **APPENDIX C**

### **STEPS REQUIRED TO SATISFY PROPOSED STREAMLINING OPTIONS**

#### **COMPETITIVE ROUTE OPTION**

**STEP ONE—IDENTIFY THE ROUTE:** The Commission proposes to consider a "route" to be the connection between the U.S. and a landing point in a foreign country. (¶ 26)

**STEP TWO—IDENTIFY ENTITIES THAT WILL CONTROL THE PROPOSED CABLE:** The Commission proposes to attribute control of an entire cable to any entity that (1) owns 50% or more of the equity in the wet link of the cable, (2) owns 50% or more of the equity in all of the landing stations in a particular country served by the cable, (3) is the exclusive backhaul provider at a landing station of the cable, or (4) exercises de facto control over the wet link of the cable or a landing station on the cable. (¶ 29, 30)

**STEP THREE—DEMONSTRATE THAT ROUTE IS, OR WILL BECOME, COMPETITIVE:** After identifying the route served by the proposed cable and who will control the cable, an applicant must show that there are at least three independently controlled cables, including the applicant's proposed cable, serving the route. (¶ 25) An applicant may demonstrate the existence of competition on a particular route by showing that there are other economically comparable means to access the destination route through a landline or submarine connection using another cable or facility stemming from a point-to-point route other than the destination route (i.e., hubbing). (¶ 26)

#### **NEW ENTRANT OPTION**

**STEP ONE: IDENTIFY ROUTE:** As under option 1, the Commission proposes to consider a "route" to be the connection between the U.S. and a landing point in a foreign country. (¶ 26)

**STEP TWO: IDENTIFY "KEY APPLICANT GROUP":** The Commission proposes to identify a "key applicant group" and examine that group's interests in the three submarine cable facilities, discussed above. (¶ 33) The "key applicant group" will include any entity that: (1) owns 50% or more of the equity in the wet link of the proposed cable, (2) owns 50% or more of the equity in a landing station on the proposed cable, (3) is the exclusive backhaul provider at a landing station of the proposed cable, or (4) exercises de facto control over the wet link of the cable or a landing station on the proposed cable. (¶ 33)

**STEP THREE: DEMONSTRATE THAT "KEY APPLICANT GROUP" CONTROLS LESS THAN 50% OF EXISTING WET LINK CAPACITY ON ROUTE:** After identifying the route served by the proposed cable and the key applicant group, an applicant must show that the key applicant group controls less than 50% of existing wet link capacity on the route in order to qualify for streamlined processing under this option. (¶ 34) This can be done by providing a list of all firms in the "key applicant group" and a calculation of this group's share of existing capacity on the route (excluding the newly proposed cable, but including cables under construction that are expected to be operating within one year). (¶ 36) The FCC proposes to attribute the entire capacity of an existing cable system to any member of the "key applicant group" that owns 50% or more of the equity in the wet link of the existing cable or exercises de facto control over the wet link of the existing cable. (¶ 35) The Commission also seeks comment on whether and to what extent capacity on an existing cable should be attributed to an entity based on that entity's control of landing stations in any country in which the existing cable lands. (¶ 35) Alternatively, a "key applicant group" providing service on the route for the first time may certify that it does not control any existing wet link on the route to be served by the proposed cable. (¶ 34)

## PRO-COMPETITIVE ARRANGEMENTS OPTION

**STEP ONE—DEMONSTRATE THAT ARRANGEMENTS REGARDING LANDING STATIONS AND BACKHAUL ARE PRO-COMPETITIVE:** The FCC proposes to allow an applicant to fulfill the requirement that it make pro-competitive arrangements regarding landing stations and competitive backhaul by including in ownership or other documents *either* the general provisions or the specific provisions discussed below. The general provisions option involves a simple statement that collocation and backhaul rights will be granted. The specific provisions alternative requires the inclusion of more specific terms and conditions for collocation and backhaul in ownership documents.

**Subpart A—Insert General Provisions in Ownership or Other Documents:** Under the proposed "general provisions" option, an applicant would include general provisions in ownership or other documents which allow for sufficient collocation at a landing station by other owners or their designees, and state that there will be no restrictions on who can provide backhaul. (§ 41) The FCC seeks comment on whether these general provisions should grant collocation and backhaul rights only to owners of equity or to IRU holders as well. (§ 44)

OR

**Subpart B—Insert Specific Provisions in Ownership or Other Documents:** The FCC also proposes a "specific provisions" option under which an applicant would include provisions explicitly stating that: (1) sufficient space at all landing stations in the U.S. and at each foreign landing station will be made available to any other owner, or the designee of any other owner, for the purpose of collocating equipment to provide backhaul, (2) all owners or designees of owners may use such space for the provision by them of backhaul services to others, and (3) there will be no restrictions on the ability of any owner to subcontract the provision of backhaul. (§ 42) In addition, an applicant would include provisions explicitly stating that at least two separate parties will provide backhaul, rather than a single entity, at all landing stations in the U.S., and at each foreign landing station on the route where applicants plan to land the proposed cable. (§ 43)

**STEP TWO—DEMONSTRATE ARRANGEMENTS REGARDING CAPACITY UPGRADES AND USE OF CAPACITY:** The FCC also proposes to require an applicant seeking streamlined processing under the "pro-competitive arrangements" option to include certain specific provisions in ownership or other documents about wet link capacity upgrades and the use of capacity. (§ 46)

**Subpart A—Provisions Relating to Capacity Upgrades:** The FCC proposes that applicants insert a provision allowing the capacity of a cable to be upgraded either by a 51% vote of the owners, or by any group of owners voting to fully fund the cost of the upgrade. (§ 47) This provision also will indicate that, where a group of owners votes to fully fund the cost of the upgrade, all owners, not just the owners voting to fully fund the upgrade, will have the right to buy into the upgrade consistent with their contractual rights. (§ 47) The Commission seeks comment on whether a firm's interest in a cable should be measured in terms of circuits, dollar value of investment or some other measure. (§ 47)

AND

**Subpart B—Provisions Relating to Use of Capacity:** The FCC proposes that applicants also insert a provision that, after the initial capacity has been funded, there will be no restrictions on resale or transfer of capacity and no restrictions on parties reselling their ownership shares and/or reselling or leasing their rights on the cable. (§ 48) The Commission seeks comment on whether an applicant should be required to state explicitly that it will not assess any unreasonable charges on owners wishing to resell or transfer capacity or ownership shares, or wishing to resell or lease their rights on the cable. (§ 48)

AND

**Potential Subpart C—Provision Relating to Firms Combining Their Capacity Requirements:** The FCC seeks comment on whether it should further require an applicant to include a provision explicitly allowing smaller firms to combine their capacity requirements for the purpose of obtaining volume discounts. (§ 49)